

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION**

**IYOV KINNIBURGH and  
KINNIBURGH CONCRETE, LLC,**

**Plaintiff,**

**VS.**

**ARLY KINNIBURGH and  
KINNIBURGH CONSTRUCTION, LLC,**

## Defendants.

**No. 1:23-cv-01190-STA-jay**

**ORDER DENYING DEFENDANTS' MOTION TO DISMISS  
AND  
EXTENDING TIME FOR SERVICE OF PROCESS**

Plaintiffs filed this action on September 7, 2023, and summonses were issued on September 8, 2023. Because the summonses have not been returned as executed, even though the requisite time for service has passed, Defendants have moved for the action to be dismissed on the ground of insufficient service of process. (ECF No. 13.) Plaintiffs have filed a response and accompanying affidavit (ECF Nos. 19, 20) which describe various problems that have arisen in attempting to serve Defendants. They seek an additional thirty (30) days in which to serve Defendants.

Under Rule 4(m) of the Federal Rules of Civil Procedure, “[i]f a defendant is not served within 90 days after the complaint is filed, the court ... must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). However, “if the plaintiff shows good cause for the failure, the court must extend the time

for service for an appropriate period.” *Id.* The court has discretion to permit late service even absent a showing of good cause. *See Henderson v. United States*, 517 U.S. 654, 662 (1996); *see also DeVane v. Hannah*, 2011 WL 5916433, at \*2 (M.D. Tenn. Nov.28, 2011) (observing that Sixth Circuit language stating that dismissal is mandatory absent good cause “originated based on a prior version of Rule 4(m), then Rule 4(j), which did not include the option for a court to order that service be made within a specified time as an alternative to dismissal”); Fed. R. Civ. P. 4 advisory committee’s note (stating that the 1993 amendment “authorizes the court to relieve a plaintiff of the consequences of an application of [Rule 4(m)] even if there is no good cause shown).

In the present case, the Court finds that Plaintiffs have shown good cause for their failure to serve Defendants within the requisite time. Accordingly, the motion to dismiss is **DENIED**. Plaintiffs will have an additional thirty days from the entry of this order in which to serve Defendants with process.

**IT IS SO ORDERED.**

s /**S. Thomas Anderson**  
S. THOMAS ANDERSON  
UNITED STATES DISTRICT JUDGE

Date: February 8, 2024